ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 2.106 of the	)	**ET Docket No. 95-18**
Commission's rules to Allocate	)	
Spectrum at 2 GHz for Use by the	)	
Mobile Satellite Service	)	

To: The Commission

OPPOSITION OF THE AMERICAN PETROLEUM INSTITUTE

AMERICAN PETROLEUM INSTITUTE

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SUMMARY

The American Petroleum Institute ("API") supports the Federal Communications Commission's ("Commission") decision to adopt the relocation framework which was so carefully crafted for emerging technologies services, such as the Mobile Satellite Service ("MSS"), in ET Docket No. 92-9. This framework represents a balancing by the Commission of two competing interests -- those of the new emerging technologies proponents and those of the incumbent licensees.

In its Petition for Reconsideration, however, the MSS Coalition attacked the fundamental relocation framework. Specifically, the MSS Coalition complained that reimbursement rules adopted five years ago would prevent the MSS entities from offering service. In addition, the MSS Coalition protested that MSS is somehow different from PCS and other emerging technologies, and that MSS therefore deserves preferential treatment vis-a-vis incumbents. Finally, the MSS Coalition argued that, if the FCC imposes relocation costs upon them domestically, the Commission will establish an "anticompetitive" and dangerous global precedent.

API believes that the relocation rules are examples of the best that regulations have to offer: they are fair, balanced, and definite. API urges the Commission to adhere to these rules, as it has indicated its intention to do so in the Report and Order.

API also urges the Commission to ignore the tired arguments of the MSS Coalition. Its Petition raises no new issues; instead, it just resurrects transparent complaints about reimbursement obligations. In those instances where harmful interference will occur because of the MSS entity's initiation of service, *someone* will be forced to pay for relocation. The Commission must determine who will bear that cost: the incumbent or the entrant. API strongly believes that the Commission reached the correct decision when it placed the burden of relocation costs squarely upon the shoulders of the entrant -- in this instance, the MSS provider.

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Amendment of Section 2.106 of the Commission's rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service	)	**ET Docket No. 95-18**

To: The Commission

OPPOSITION OF THE AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute ("API"), pursuant to Section 1.106 of the Rules and Regulations of the Federal Communications Commission ("Commission"), by its attorneys, hereby respectfully submits this Opposition to the Petition for Reconsideration filed by the MSS Coalition on May 20, 1997 in response to the Report and Order ("Order") adopted by the Commission in the above-styled proceeding.[1/]

[1/] MSS Coalition Petition for Reconsideration, 62 Fed. Reg. 30586 (June 4, 1996). First Report and Order and Further Notice of Proposed Rule Making, ET Docket No. 95-18 (March 14, 1997).

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. One of the Telecommunications Committee's primary functions is to evaluate and develop responses to state and federal proposals affecting telecommunications services and facilities used in the oil and gas industries. Consistent with that mission, it also reviews and comments, where appropriate, on other proposals that impinge on the ability of the energy industries to meet their telecommunications needs.

II. BACKGROUND

2. In its Order, the Commission reallocated the bands 2110-2130 MHz and 2165-2200 MHz for the benefit of the Mobile Satellite Service ("MSS").[2/] The band

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[2/] The FCC also reallocated the band 1990-2025 MHz from Broadcast Auxiliary Services (continued...)

2165-2200 MHz, along with the band 2110-2145 MHz, (together, "the 2.1 GHz band") is currently utilized in the Fixed Services ("FS") for systems operated by, among others, the petroleum and natural gas industries. The petroleum and natural gas industries rely on their FS systems to monitor and control crucial operations involving the transport via pipeline of potentially hazardous materials. These FS systems are often located in remote areas of the country, where no commercial service is available. In addition, the important functions served by these systems necessitated the expenditure of significant resources by the incumbent FS licensees in order to ensure that these communications systems are highly reliable.

3. In its Order, the FCC adopted relocation rules developed in the emerging technologies proceeding, ET Docket No. 92-9. Where harmful interference would occur, these relocation rules require MSS licensees to either pay for relocation of incumbents to **comparable facilities** or reach a voluntary agreement with incumbents before commencing service in the 2.1 GHz band.

[2/] (...continued)
("BAS") to MSS for use as the uplink to the satellites. In turn, BAS users were re-channelized into narrower channels and also received a reallocation of the band 2110-2130 MHz, which is currently occupied by Common Carrier Microwave licensees.

III. OPPOSITION

A. The Relocation Rules Are Well-Designed

4. API believes that the Commission was wise to adhere to the relocation rules it established in the comprehensive emerging technologies proceeding, ET Docket No. 92-9.[3/] In that proceeding, both microwave incumbents and emerging technologies providers argued long and hard to achieve a successful balance between two competing interests: (1) incumbents' need to protect public safety and continue providing their vital services in support of their core businesses; and (2) the commercial interests of emerging technologies providers in providing prompt and cost-efficient new services to the American public. The outcome of this protracted weighing of the two competing interests was the relocation paradigm. As the Commission noted in its recent cost-sharing proceeding, WT Docket No. 95-157, "the existing relocation procedures for microwave incumbents adopted in the *Emerging Technologies* docket were the product of extensive comment and deliberation prior to the initial licensing of PCS."[4/]

[3/] First Report and Order and Third Notice of Proposed Rule Making, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992).

[4/] First Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 95-157, 11 FCC Rcd 8825 (April 30, 1996).

5. This relocation paradigm has been successful in the early introduction of PCS. For example, in its First Report and Order concerning the cost sharing rules, in WT Docket No. 95-157, Chairman Hundt and Commissioner Quello both expressed their view in separate statements that these relocation rules work well and that many emerging technologies providers have successfully relocated incumbents as a result of this relocation process.[5/] Although it is still early to judge the results for every PCS entity, numerous success stories, particularly for the A and B Block PCS licensees have been analyzed by the Commission. The clear lesson learned from this experience is that the relocation rules are working well.

6. These rules *should* work well: they strike a balance between the interests of microwave incumbents, who in ET Docket No. 92-9, pleaded for many years in which to relocate their systems, and those of the emerging technology proponents, who argued for immediate relocation. Similarly, when the rules were first being formulated, microwave incumbents sought payment from emerging technologies providers beyond simply the replacement value of systems -- in recognition of the fact that their businesses would be severely disrupted.[6/] In response, emerging technologies providers argued that

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[5/] First Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 95-157, 11 FCC Rcd 8825 (April 30, 1996).

[6/] For example, employees must be assigned to work full-time on the relocation process who otherwise would be working on matters directly related to the incumbents' principal

(continued...)

no reimbursement whatsoever should be paid to incumbents. As a result, the Commission reasoned that some middle ground must be found. This middle ground is the existing negotiation framework coupled with reimbursement rights for comparable facilities in those instances **when interference would have occurred based on the TIA Bulletin 10-F analysis.**

7. In the instant Order, the Commission has adhered to this well-crafted relocation process. All parties are now on notice that, if interference occurs according to the developing TIA standards, then the MSS provider cannot begin operating in this spectrum unless and until it has relocated the microwave incumbent to comparable facilities and provided reimbursement for that relocation. Similarly, incumbents will be entitled to a negotiation period during which time they may reach a voluntary agreement with the MSS provider. Thus, no one is forcing the emerging technologies providers to simply replace existing systems with full reimbursement. In fact, it is API's experience that many PCS licensees have reached alternative arrangements with microwave incumbents whereby incumbents receive value-added services, or simply cash for leasing facilities, in lieu of constructing and operating replacement microwave facilities. This flexibility in the existing framework is only possible because emerging technologies providers and incumbents alike both know that, at the end of this negotiation period,

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[6/] (...continued)
endeavor.

forced relocation can occur. The guarantee of comparable facilities in the event of such forced relocation provides the backdrop against which meaningful negotiations occur and mutually satisfactory relocation agreements are reached.

8. Despite all the history and successes behind the creation and implementation of these emerging technologies rules, the MSS Coalition would have the Commission believe that it is somehow entitled to special treatment. The MSS Coalition argues that MSS providers should not be treated like PCS entities for relocation purposes because MSS providers will be offering a nationwide service, rather than a local service. Petition at 29. Therefore, MSS providers will be required to negotiate with every FS and BAS incumbent individually. Petition at 29. API points out that this uniformity of providers will make it much easier for the parties to reach successful agreements, because there will be fewer parties on the one side of the table than in the PCS context. API also points out that there are many PCS entities that plan to provide national, rather than just local, PCS service. Thus, the difference between PCS and MSS is not detrimental to MSS -- if anything, it will promote successful negotiations.

9. The MSS Coalition states that it is also different from PCS because "unlike with PCS and FS operators, sharing between MSS and FS operations in the 2165-2200 MHz band may well be possible for an extended transition period in most

areas". Petition at 29. The MSS Coalition then argues that, if the Commission requires MSS operators to pay FS relocation costs:

> [S]ome incumbents could be encouraged to demand reimbursed relocation rather than continue to cooperate in efforts to share spectrum both in the paired bands at 2110-2130 and 2160-2180 MHz and in the remainder of the downlink at 2180-2200 MHz.

Petition at 30.

10. The MSS Coalition ignores the fundamental precept of the Commission's relocation rules: relocation is only necessary if harmful interference would occur. Otherwise, no relocation would be necessary. Thus, incumbents cannot "demand" reimbursement from MSS providers in lieu of sharing spectrum. Only when spectrum cannot be shared in the first place do relocation, and reimbursement, come into play.

B. Reimbursement Is Appropriate for Incumbent Relocation

11. In Comments, Reply Comments and countless ex parte meetings in this proceeding, the MSS industry has attempted to persuade the Commission to entirely abandon incumbent relocation rights. The MSS industry believes this is appropriate because sharing has somehow been proven to work and, if relocation were necessary,

they assert, then no reimbursement whatsoever should be due. In fact, the MSS Coalition even states that relocation expenses "would prevent altogether the development of MSS in the United States and potentially elsewhere." Petition at 25.

12. API is not surprised by the MSS Coalition's bold statements simply because the MSS entities have repeatedly presented these same arguments to the Commission in the past, both through formal Comments and in ex parte meetings. In fact, the MSS Coalition's Petition simply rehashes former arguments in a transparent attempt to avoid paying for incumbent relocation costs.

13. API urges the Commission not to be swayed by these baseless claims that reimbursement would ruin the MSS industry. In a study announced June 3, 1997, Robert Kaimowitz, a senior analyst at Unterberg, Harris, concluded that, despite the costs of providing service, ICO and all other MSS entities should succeed because of the enormous demand for telephone service worldwide.[7/] In addition, PCS licensees are currently providing cost-justified service after paying to relocate incumbents. Moreover, these PCS licensees bid over $20 billion for their licenses -- a cost which MSS proponents would be entirely relieved of if the Commission does not auction MSS licenses.

7/ See, Communications Daily, Vol. 17, No. 106, June 3, 1997, at 12.

14. MSS will be a global mobile service. As such, its start-up costs can be spread out over a much wider base of customers than any telecommunications service heretofore provided on this planet. The relocation costs of incumbents will be minimal when compared to the enormous profits to be reaped by MSS companies worldwide.

15. The relocation reimbursement rules have existed since 1992. The MSS Coalition entities are sophisticated companies that certainly have studied the rules and factored the costs of doing business long before seeking to initiate service. API strongly urges the Commission not to be persuaded by the scare tactics of the MSS Coalition when it claims that it would abandon all plans to provide service if forced to reimburse incumbents for relocation.

C. The Reimbursement Rules Are Neither Anticompetitive Nor Discriminatory

16. As support for their radical proposal against reimbursement, the MSS Coalition theorizes that the imposition of relocation costs in the 2.1 GHz band "could bar or seriously impede access" to the U.S. market for both U.S. MSS licensees and foreign-based MSS licensees. Petition at 31. As such, the Commission's relocation rules, according to MSS proponents, are "unfairly discriminatory" vis-a-vis other satellite services. Petition at 31.

17. Where incumbents exist in a band that is reallocated for commercial satellite service, the Commission generally imposes reimbursement costs. One such example occurred in the 18 GHz band that was occupied by Digital Electronic Messaging Service ("DEMS") providers and recently reallocated to Teledesic. Not only will Teledesic pay to relocate incumbents, it has offered to upgrade their systems in light of the less favorable propagation characteristics of the replacement spectrum, the 24 GHz band.

18. The MSS Coalition also complains that the reimbursement rules are "anticompetitive" vis-a-vis other countries' policies. Petition at 31. However, the reimbursement rules would apply equally to all MSS providers in the 2.1 GHz band, regardless of whether they are foreign or domestic licensees. It is difficult to see how such a policy is anticompetitive vis-a-vis other countries, since reimbursement would be a cost that applies equally to both domestic and foreign providers.

19. Finally, these MSS proponents speculate that the Commission's relocation decision:

> [E]stablishes a precedent that could provoke other administrations to adopt similar discriminatory measures in other bands against other satellite service providers, including U.S.-licensed systems.

Petition at 34.

20. In the great majority of foreign countries, the 2.1 GHz band is not nearly as encumbered as it is in the United States; therefore, much of the MSS industry's relocation costs will be incurred in the United States. Thus, MSS proponents only speculate when they claim that, if reimbursed relocation occurs in the United States, then MSS entities will face similar costs worldwide.

21. Finally, API points out that America is at the forefront of industrial safety telecommunications because it leads, rather than follows, other countries. We should not set our domestic policy based upon what other countries may do, or how other countries may react; rather, we should adopt rules that protect the best interest of the American public. Communications systems which operate in the 2.1 GHz band ensure that potentially hazardous operations, including production and transportation of petroleum and natural gas; electricity; railroad operations; and public safety communications are all conducted in a safe and efficient manner. These systems are a large part of the reason why so little is heard about the day-to-day operations of these otherwise perilous industrial activities. The same cannot be said for other countries around the world, where these activities are conducted with much more frequent peril. Despite the protests of MSS companies, the fact that other countries may choose to implement relocation reimbursement is a matter which lies beyond the control of the FCC. These countries will adopt whatever policies they choose regardless of whether or not the FCC requires reimbursement for incumbent relocation.

22. Should other countries decide to impose relocation costs on MSS licenses, those costs ultimately will be borne by consumers in those individual countries. For example, if Brazil were to impose relocation reimbursement on MSS licensees in the 2.1 GHz band, the monies expended by MSS providers would ultimately be passed on to consumers in Brazil in the form of higher service costs. Thus, MSS proponents' claims that reimbursement costs would increase their own internal costs are inaccurate: those costs would be passed on to the consumers themselves.

D. Other Uses Could Be Provided in the 2.1 GHz Band

23. If MSS proponents really are unable to pay relocation costs, then API urges them to seek spectrum in other bands which are less heavily encumbered and which are in less demand. API submits that there are other uses for the 2.1 GHz band, including retention of existing incumbent systems, which would be beneficial.

IV. CONCLUSION

24. The MSS industry should be held to the same relocation standard as other emerging technologies providers. Most notably, MSS licensees should be required to fully reimburse incumbents for relocation costs. The MSS Coalition claims that it would not offer service if forced to reimburse incumbents for relocation to new facilities.